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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

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18 DONALD J. TRUMP, KELLY VICTORY,
AUSTEN FLETCHER, AMERICAN
19 CONSERVATIVE UNION, ANDREW
BAGGIANI, MARYSE VERONICA JEAN-
20 LOUIS, NAOMI WOLF, and FRANK
VALENTINE,

21 Plaintiffs,

22 v.

23 YOUTUBE, LLC and SUNDAR PICHAI,

24 Defendants.

) CASE NO.: 4:21-cv-08009-JSW
) **OPPOSITION TO PLAINTIFFS'**
) **ADMINISTRATIVE MOTION FOR**
) **LEAVE TO FILE RESPONSE IN**
) **OPPOSITION TO THE MOTION**
) **AND MEMORANDUM OF LAW BY**
) **INTERVENOR UNITED STATES OF**
) **AMERICA IN SUPPORT OF THE**
) **CONSTITUTIONALITY OF 47 U.S.C.**
) **§ 230(c)**
) Hon. Jeffrey S. White

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1 Defendants YouTube, LLC and Sundar Pichai (“Defendants”) respectfully oppose Plaintiffs’
 2 administrative motion seeking leave to file a response to the intervention brief filed by the United
 3 States in support of the constitutionality of 47 U.S.C. § 230. Dkt. 144.

4 Plaintiffs’ motion for preliminary injunction and Defendants’ motion to dismiss are now
 5 fully briefed. Briefing was completed on February 11, 2022, when Defendants filed their reply brief.
 6 Hours later, however, Plaintiffs moved for leave to respond to a brief the United States had filed
 7 over two months earlier, on December 9, 2021. Plaintiffs do not explain why they waited so long to
 8 make this request, or why they ignored multiple opportunities to respond to the government’s
 9 submission during the regular briefing process. Plaintiffs also failed to consult Defendants or seek
 10 the stipulation required for an administrative motion by this District’s Local Rules. In light of
 11 Plaintiffs’ procedural gamesmanship, their motion should be denied. If the Court grants the motion,
 12 Defendants respectfully request an opportunity to submit a short response to Plaintiffs’ brief.

13 ARGUMENT

14 Plaintiffs’ administrative motion is improper for at least two reasons. *First*, Plaintiffs neither
 15 sought Defendants’ consent to their motion nor accompanied it with the stipulation required by the
 16 Local Rules. *See* Civil L.R. 7-11(a) (“A motion for an order concerning a miscellaneous
 17 administrative matter … must be accompanied by … either a stipulation under Civil L.R. 7-12 or
 18 by a declaration that explains why a stipulation could not be obtained.”); Civil L.R. 7-12 (requiring
 19 approval of stipulations from “all affected parties or their counsel”). While Plaintiffs contacted the
 20 government for its position on their request, they conspicuously failed to do the same with
 21 Defendants. Plaintiffs offered no excuse or justification for cutting Defendants out of the process,
 22 and their approach is not permitted by this Court’s rules.

23 *Second*, Plaintiffs should not be rewarded for their self-serving delay in seeking to respond
 24 to the United States’ intervention brief. On December 2, 2021, the government filed its notice of
 25 intervention (Dkt. 128), and its brief was filed on December 9, 2021 (Dkt. 132). At that time,
 26 Plaintiffs did not seek leave to respond to the government. More than a month later, on January 17,
 27 2022, Plaintiffs filed a combined 35-page opposition to Defendants’ motion to dismiss and reply in
 28 support of Plaintiffs’ preliminary injunction motion. Dkt. 141. Anything they wanted to say about

1 or in response to the United States' position on Section 230, Plaintiffs could have said then. But
2 Plaintiffs again ignored the government's submission. Only now, more than two months after the
3 government filed its brief, nearly a full month after Plaintiffs filed their brief, and hours after
4 Defendants filed their reply, have Plaintiffs requested leave to respond to the United States.
5 Plaintiffs offer no explanation for the timing of their request, much less their failure to consult with
6 Defendants before making it. Only one explanation makes sense: by waiting until now, Plaintiffs
7 seek to deprive Defendants of an opportunity to address the new arguments advanced in Plaintiffs'
8 proposed brief. That is improper: Plaintiffs had ample opportunity to respond to the government,
9 and they should not be allowed to flout the Local Rules in an unwarranted effort to have the last
10 word.

11 **CONCLUSION**

12 For these reasons, Plaintiffs' administrative motion should be denied. Should the Court grant
13 Plaintiffs' motion, Defendants respectfully request an opportunity to submit a short response to
14 Plaintiffs' submission, not to exceed five pages.

15
16 Dated: February 15, 2022

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